

RESPONSE TO COMMENTS

PROPOSED MODEL RULE MEDICATION AMENDMENTS

The Racing Commission received comments both in support of and in opposition to several of the proposed amendments in which the Commission seeks to adopt Association of Racing Commissioners International (ARCI) Model Rules pertaining to medications in thoroughbred racing. Specifically, the Racing Commission seeks to adopt the Model Rule to lower the permissible post-race testing thresholds for Non-Steroidal Anti-Inflammatory Drugs (NSAIDs). ARCI updated and lowered these thresholds in December 2019 based upon evidence that previous, higher thresholds were compromising pre-race fitness evaluations of horses by state veterinarians. NSAIDs mask pain causing lameness in a horse to be concealed when evaluated for racing fitness. Of the Mid-Atlantic racing jurisdictions, including VA, NY, NJ, DE, PA, MD and WV, only WV has not yet adopted these lowered NSAID thresholds. Many jurisdictions outside of the Mid-Atlantic have also adopted these thresholds. Therefore, there is ample information and evidence for WV to look to and draw upon regarding the implementation of this Model Rule. Upon information and belief, it has been successfully and safely implemented in those other jurisdictions. After considering the comments, the Commission determined to proceed with this rule through the legislative process because it believes that it is important for WV to adopt a uniform industry standard that puts WV in the mainstream of thoroughbred racing regulation and to address safety concerns associated with the higher thresholds currently in WV's rule.

The Commission also put out for public comment a companion amendment to the NSAID thresholds that would amend the penalty guidelines for violations of the NSAID thresholds, consistent with the ARCI Model Rule. WV's current rule has an outdated Model Rule penalty structure that contains a two-tier penalty system. Currently, for NSAID violations under a certain level, lower penalties are imposed and for NSAID violations over a certain level, higher penalties are imposed. When ARCI adopted the new NSAID penalties discussed above, it did away with the two-tier penalty system and established one set of penalties for NSAID violations. What ARCI did was collapse all penalties into the higher penalty bracket that was already in the Model Rule and do away with the lower penalty bracket. In order to make WV's penalty guidelines consistent with the current Model Rule, it is proposed that the rule be amended to do away with the two-tier penalty guidelines for NSAID violations in Table 178-1 E and to establish one set of penalty guidelines for all NSAID violations. The proposed amended penalties are: First offense: Minimum fine of \$1,000.00 absent mitigating circumstances; Second offense: Minimum fine of \$1,500.00 and 15-day suspension absent mitigating circumstances; Third offense: Minimum fine of \$2,500 and 30-day suspension absent mitigating circumstances. Disqualification of the horse would also be imposed for all levels of offenses. This would make WV's rule consistent with the RCI Model Rule. After considering the comments, the Commission determined to proceed with this Model Rule amendment in order to bring its rule in agreement with the current Model Rule. Because of the safety concerns associated with violations of the NSAID thresholds, it is important that the Commission have a penalty system which will deter violations and that will punish those who commit violations. The penalty cannot function merely as an accepted cost of doing business.

The Commission also seeks to amend the rule to adopt the most current version of the ARCI Model Rule Uniform Classification Guidelines. The Racing Commission's rule that passed through the Legislature during the 2021 regular session and that will go into effect on July 28, 2021, will have Version 14.1 (Jan. 2020) of this Model Rule in it. ARCI most recently adopted an update to this Model Rule in December 2020, bringing the Model Rule up to Version 14.4. These Classification Guidelines are a comprehensive list of drugs and other substances that may be found in the horse in post-race testing. The list categorizes the drugs and substances based upon permissible and non-permissible use in the horse and serves as a guideline in determining the appropriate penalties for a positive drug test under the rules. ARCI updates these Guidelines as new substances are found and analyzed. There were no comments in opposition to adopting this Model Rule and therefore, the Commission determined to move forward with adoption.

The Commission also seeks to amend the rule to adopt the ARCI Model Rule that makes a horse ineligible to race for fourteen days after having had an Intra Articular joint injection. ARCI adopted this Model Rule in 2019 and WV's rule has not yet come into conformity. WV's current rule has a previous iteration of the ARCI Model Rule on Intra Articular joint injections which is more permissive than the current Model Rule. Of the Mid-Atlantic racing jurisdictions, including VA, NY, NJ, DE, PA, MD and WV, only WV has not yet adopted this Model Rule. Many jurisdictions outside of the Mid-Atlantic have also adopted this Model Rule. Therefore, there is ample information and evidence for WV to look to and draw upon regarding the implementation of this Model Rule. Upon information and belief, it has been successfully and safely implemented in those other jurisdictions. After considering the comments, the Commission determined to proceed with this rule through the legislative process because it believes that it is important for WV to adopt a uniform industry standard that puts WV in the mainstream of thoroughbred racing regulation and to address safety concerns associated with the more permissive joint injection standard currently in WV's rule. This is an equine health and safety issue.

The Commission also seeks to amend the rule to adopt the ARCI Model Rule with regard to the use of clenbuterol in the horse. Clenbuterol is legitimately prescribed for airway illnesses in the horse. However, the drug has been misused by both veterinarians and trainers to build muscle mass. If given in sufficient quantities over time, clenbuterol builds muscle mass through anabolic properties. The current Model Rule prohibits the use of this substance in racing and training unless certain conditions are met including an appropriate diagnosis by a treating veterinarian and approval by a treating veterinarian. Any horse administered clenbuterol under these conditions must be placed upon the veterinarian's list and is not permitted to enter a race until it presents for a timed workout and blood and/or urine samples demonstrate the absence of the substance in the horse. To be clear, West Virginia's current rule does not allow the presence of clenbuterol in the horse at any threshold in a post-race test. This has been the standard in WV, in other racing jurisdictions, and in the Model Rule, for many years. However, the use of clenbuterol in the horse has continued to be a problem in WV and throughout other racing jurisdictions as it is given to horses to build muscle mass. Therefore ARCI adopted amendments to the Model Rule which require trainers who give clenbuterol to the horse to be able to produce a valid prescription from a treating veterinarian and impose other requirements summarized above. Therefore, the new Model Rule amendments do nothing to change the status quo about whether or not clenbuterol is permissible in a post-race test. It continues to be prohibited for purposes of post-race testing, as it has been for many years. The new Model Rule amendments that WV proposes to adopt merely require those who use it to produce legitimate prescriptions for its use in the horse and require horses who are prescribed the drug to be on the vet's list until the drug clears the horse's system. Therefore, after considering the comments

on this proposed rule, the Commission determined that its adoption is justified to deter misuse of this substance in racing.

PROPOSED STABLE GATE/RECEIVING BARN AMENDMENTS

The Charles Town HBPA requested that the Commission propose amendments which would regulate and impose additional requirements on the racetracks with regard to security, operational hours and operational standards for the stable area and receiving barn. The Commission put the requested amendments out for public comment and received comments in opposition to the amendments from both Charles Town and Mountaineer racetracks. After considering the comments and deliberating on the matter, the Commission voted not to proceed with these amendments. The Commission believes that there may be differences in operational issues between the two existing racetracks which dictate against adopting one set of standards for both tracks. Further, at the present time, many of the issues sought to be addressed by the proposed amendments are better suited to discussion and negotiations between the organizations representing the majority of the horsemen and racetrack management at each location.

PROPOSED PURSE DISTRIBUTION AMENDMENTS

The Charles Town HBPA also requested that the Commission propose amendments which would allow purse distribution after the official end of each race and before post-race tests have cleared the testing laboratory(ies) under certain circumstances and conditions. The Commission's current rule only allows purse distribution after post-race tests have cleared. The Commission put the requested amendments out for public comment and received comments related to the amendments. After considering the comments and deliberating upon the matter, the Commission voted to modify the proposed language so as to only allow early purse distribution if the organization representing the majority of the horsemen and racetrack management have an agreement which specifies the conditions under which such distribution can occur. Purse release agreements must be executed with each owner who chooses to take advantage of early purse distribution. Further, time frames for early purse distribution and purse reimbursement in the event of a subsequent positive test, were modified to accommodate operational and convenience issues for the horsemen and the racetracks. In addition, the language was modified to require the filing with the Racing Commission of any agreements reached between the horsemen and the racetracks and to specify that in the absence of an agreement, purse distribution shall occur only after the tests have cleared.



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June 28, 2021

Via Email Only

WV Racing Commission
900 Pennsylvania Ave. Suite 533
Charleston, WV 25301
joe.k.moore@wv.gov

RE: Thoroughbred Racing Rule 178 CSR I

To Whom It May Concern:

The undersigned represents the Charles Town HBPA, Inc, sometimes herein referred to as CT HBPA. What is contained in the body of this letter shall serve as the official comments of Charles Town HBPA, Inc. to the amendments to Thoroughbred Racing Rule 178 CSR I proposed by the West Virginia Racing Commission (the "Commission") and filed with the office of the West Virginia Secretary of State on May 28, 2021. The comment period provided for in the notice of rule expires on June 28, 2021 at 5:00 p.m.

The amendments to Thoroughbred Racing Rule 178 CSR I come on the heels of amendments pursued in the Legislative Rulemaking Review process in 2020 and ultimately, with some modification, being approved by the legislature during the 2021 Regular Session of the West Virginia Legislature in the form of Senate Bill 160. Senate Bill 160 passed on March 23, 2021, was later signed into law by the Governor, and which becomes effective on July 28, 2021, is now being amended even before the new amendments have yet to be implemented.

Newly proposed amendments to 178 CSR I which are the subject of these comments, represent significant changes from newly amended 178 CSR I – new changes which have yet to be implemented. Generally, the comments herein made relate to subject areas as follows:

1. Opposition to the adoption of a far more restrictive therapeutic (non-performance enhancing) medication schedule with increased penalties for violations through adoption of penalty guidelines of the Association of Racing Commissioners International.
2. Opposition to new limits for use of therapeutic medications commonly used to reduce joint stiffness and inflammation as simple as a NSAID dosage far less than that typically taken by humans for soreness and inflammation of joints. Such a limited dosage will impact the humane treatment of thoroughbreds which may be suffering from joint pain that can be relieved. But for fear that there may be a lingering miniscule trace of the NSAID on an upcoming race date that could result in serious penalties for trainers and owners,

disqualification of horse (remember therapeutic only and not performance enhancing) and winnings lost, chances are there will be a decision to use what has been a commonly used medication.

3. Opposition to the reformation of stacking provisions for violations of findings of excessive trace amounts of NSAIDs. Section 49.6.c.2.A eliminates two stacking tiers and creates a one violation penalty for infractions of a far more restrictive standard for use. The reduced levels of allowance of use of NSAIDs as therapeutic treatment of joint inflammation is uncommonly minimal and unjustified.
4. Limitation of intra-articular injections of thoroughbreds to treat overall joint pain to a requirement that the horse must be restrained from racing for 14 days following treatment is also found to be an unjustifiable finding in every case. There is a clear correlation between joint health of the horse and corticosteroids. Not all injuries are the same and a "one-size fits all" application of the rule and the severity of penalties associated are found to be objectionable by CTHBPA.
5. The amended rule (49.17) grossly limits the use of Clenbuterol for Inflammatory Airway Disease and CTHBPA objects to the standard represented by the amended rule. Should a horse be on a Corticosteroid or NSAID for joint inflammation, the use of Clenbuterol for management of IAD will likely combine to cause a violation of the rule and a Class B penalty. Clenbuterol is an FDA approved therapeutic medication used for the management of Inflammatory Airway Disease (IAD) and airway obstruction in horses. Because IAD commonly affects Thoroughbred racehorses in training, the use of Clenbuterol, a prescription medicine which may only be dispensed by or upon the request of a veterinarian, is a matter of maintaining the health, if not the life of a horse that suffers IAD.

The absence of documented West Virginia circumstances predicated on actual cases as well as opinions of West Virginia equine veterinarians who treat predominantly West Virginia Thoroughbreds racing at West Virginia racetracks might be something that should be considered in advance of adopting a one-size fits all oversight application. While easy to administer and impose penalties, such a policy supplants the expert medical judgment of treating veterinarians addressing individual cases of Thoroughbred health. A one size fits all solution may not serve the best and humane treatment of the equine athlete domiciled in West Virginia. Indeed, when there is an abuse of use of NSAIDS or Clenbuterol or similar medication which is clear and demonstrative, CTHBPA endorses investigation, prosecution and upon appropriate findings the imposition of proper penalties which not only punish the offender but serve as a deterrent to others from similarly violating the rule resulting in harm to a Thoroughbred. The question therefore becomes one of magnitude. Is there a verifiable problem within the West Virginia Thoroughbred racing community in over-medicating horses? Do we harm Thoroughbreds by refusing safe, time-tested and successful therapeutic medications?

The adoption by reference of a new medication schedule for horses, being ARCI Controlled Therapeutic Medication Schedule for Horses 4.2.1 constitutes substantial reduction in tolerable medication limits far beyond current rule. Current rule is and has been ARCI

Controlled Therapeutic Medication Schedule 3.2. It is unknown whether there is any compelling evidence of maltreatment of Thoroughbreds in West Virginia through utilization of Schedule 3.2. According to leading equine veterinarians in West Virginia, such items as an intra-articular injection is a valuable and potentially life-saving treatment option, that will become less frequently used, if at all, under the restrictive provisions of the amended rule as filed.

Many of the sections of the 178 CSR I which have been amended and become effective today are now proposed for further amendment, but there appears to be no compelling West Virginia specific facts or data which warrant immediate change at this time to the medication schedule and associated penalties for violation thereof. Perhaps some of this is due to the reduced live racing programs at Hollywood Casino and Races at Charles Town, consequently in large measure to conditions associated with the Covid-19 Pandemic and reduced capacity on multiple facets of the host facility over multiple months of 2020 pursuant to necessary and prudent executive orders imposed by the Governor of West Virginia. Perhaps, its just that there really has not been a plethora of cases under pre-existing normal circumstances which create a valid concern that needs addressed.

Another reason to withhold concern on much of what is in the proposed amended rule is the potential impact of the Horseracing Integrity and Safety Act of 2021. Questions of federal pre-emption of state based thoroughbred racing regulations could mean that the policies governing the care, training and healthcare of Thoroughbred horses will be changing under the provisions of such Act. What does seem to be clear under the Act is that the HISA Authority constitutes a redundant enforcement mechanism as to alleged safety and medication violations. In turn, this results in increased operating costs for horse people in the sense that not only is there a state level of issue adjudication, but also a new federal level of engagement. With substantially modified reduced medication levels as provided for in the amendments to the rule, the likelihood of increased enforcement actions at the state level with subsequent administrative processes at the federal level, seems to foretell increased administrative and legal costs for the WV Racing Commission and the horse people of West Virginia. The very threat of this makes it such that those in the business of breeding, owning, training, or providing medical treatment for Thoroughbred horses have a complete lack of consistency and predictability into how they are to manage and conduct their businesses. It might also appear that with the extremely limited medication allowances that there will be more administrative costs and legal costs associated with an increase in adjudicatory processes. The filing of the proposed amended rule indicates no increase in cost is associated with the amendments proposed. It is further stated in the filing of the rule that there are no lost revenues (to the state) or economic impact to the state or its residents. The prospect of significantly more enforcement actions where minute traces of therapeutic medications are a violation surely means there will be additional costs to the state for investigative and enforcement actions. To CTHBPA members it means an uneasily defined cost of operations to be certain not to violate such stringently restrictive standards, not being able to timely restore a valuable Thoroughbred to racing status using common therapeutic medications, and the unknown impact of the intersection of state and federal enforcement actions for any violation which may occur.

Moreover, one might want to survey breeders and trainers in Jefferson County, West Virginia as to the condition of their businesses and their projections for the future. In an area of

the state where the agricultural economy relies on Thoroughbreds as its anchor, whether it be a breeding farm or a farm that grows and supplies essential commodities for Thoroughbreds, some realization must be given to the potential for the loss of jobs, along with the loss of investment and reinvestment in Thoroughbred operations in West Virginia due to the inability to have the certainty and predictability vital to sustainable business operations. Such makes business planning across a wide spectrum of variables virtually impossible, and it is further exacerbated by the enactment of the federal Horseracing Integrity and Safety Act.

One of the ramifications of a multiplicity of regulation between the state and federal government is that it brings about cost prohibitive operational requirements for horse people represented by CTHBPA. If such causes a reduction in the local Thoroughbred population in Jefferson County, there quite obviously will be a reduction in live racing opportunities at Hollywood Casino and Racetrack which causes a decline in simulcast revenue, pari-mutuel betting revenue, and even casino gaming revenue. It also causes a reduction in jobs and revenues emanating from supporting agricultural and general business enterprises operating in Jefferson County, West Virginia, the leading county in West Virginia for tourism revenue.

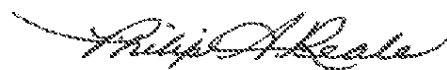
On December 28th, 2020, President Trump signed into law the Consolidated Appropriations Act of 2021. Embedded within this more than 2000-page piece of legislation is the Horseracing Integrity and Safety Act. Most salient among the provisions of the Act perhaps, is the establishment of a new federal oversight authority for the sport of Thoroughbred racing. This authority would operate as a private non-profit organization. It is vested with regulatory authority over the horseracing industry. Noteworthy is the fact that the Authority will sit in review of all medication and track safety violations. The Authority is required to "establish uniform rules . . . imposing civil sanctions against covered persons or covered horses for" violations of its rules, potentially including rules of strict liability. HISA §8(d)(1) and §8(a)(2)(A). Additionally, it is given the authority to investigate violations of its rules, complete with the power to issue and enforce subpoenas and adjudicate violations of its rules, including the authority to bring civil actions in federal courts to enforce its regulations and impose penalties including lifetime bans from racing. It becomes a new day for West Virginia horse people who are distinctively different from certain others of a more recognizable fame and fortune. There is a certain amount of banter that there are those who desire to remove those of less fame and fortune from competing. Should that be the case, the industry in West Virginia may well be at an inflexion point and the imposition of stringent, and arguably unnecessary, limitation of the use of something as common as an NSAID in an already very limited quantity, might well be what other forces in the live racing industry would like to see happen. It could be devastating for West Virginia's horse people to have to survive in a world they have no capacity in which to survive.

Indeed, there are a few things that the West Virginia Racing Commission could address to make circumstances just a little more business friendly for horse people in Jefferson County. There could be modification of 178 CSR 1, §10.3.c to allow expedited disbursement of funds to trainers in West Virginia. Clearance of primary testing as a condition precedent to trainers receiving their share of winnings is resulting in extreme hardship for some. West Virginia could also emulate the policies of other states and allow owners to receive their purse awards within 48 hours of the official end of a race by entering into a purse release agreement for serious sanctions should such an agreement be violated.

If truly concerned about equine health and avoidance of the spread of contagious diseases, a comprehensive rule relating to operation and maintenance of a receiving barn to receive horses not stabled at Charles Town and monitoring such horses at least 24 hours prior to post time. The receiving barn should be equipped with electronic surveillance as well to detect improper or illegal medication actions and other potential forbidden acts. Seems like a sensible and essential item that should be mandated by the West Virginia Racing Commission.

In closing, West Virginia horsemen and horsewomen face very unsettling times which preview the uncertainty of what their business future holds. The combination of amending a set of set rules that have just today become effective and have yet had results to be calculated from actual experience, amending those rules today in any number of particulars, layered by the uncertainty of what a new federal regulatory regime not before seen may produce, is a very, very chilling effect on investment and growth in the Thoroughbred industry in West Virginia, an industry which at times has shown tremendous promise as a provider of jobs, a facilitator of farm development for Thoroughbred breeding and farms for serving the Thoroughbred industry. The unique for West Virginia agriculture economy in Jefferson County, West Virginia, has served as the provider of the essential commodity – racehorses – for the fulfillment of a mandatory statutory item – live racing – essential to the state's largest casino operation and the State's largest producer of casino gaming and racing revenues. To simply ignore the fiscal risks complicit with what could happen to the Thoroughbred industry without some settling of rules and regulations to a point where there is some predictability and certainty for the business operation side of Thoroughbred racing is extremely naïve. Constant change in regulatory oversight for any industry is an issue. The Thoroughbred industry is no different. Where documented West Virginia circumstances do not present a mandate for change, change for the sake of change year after year frustrates and stifle the industry served.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Philip A. Reale", with a stylized flourish at the end.

Philip A. Reale

Jennifer Johnson- 1st VP
J. Michael Baird -2nd VP

Jami Poole
President

Jana Tetrault
Executive Director



OWNER DIRECTORS

Jeanette McIntosh
Dennis Behrmann
Terry Staley
Louise Poole

TRAINER DIRECTORS

Eddie Clouston
John W. Baird
Bill McDonald
David Treharne

June 18, 2021

West Virginia Racing
Commission
900 Pennsylvania Avenue
Suite 533
Charleston, WV 25302

Dear Commissioners,

Thank you for the opportunity to express concerns regarding the proposed West Virginia Thoroughbred Rules of Racing. We understand this is a laborious process that requires careful consideration and review. We appreciate your attention and consideration of our comments.

The Mountaineer Park HBPA voted to oppose the rule changes that relate to the NSAID withdrawal times and penalties as stated at the rules committee meeting.

1. Amend the rule to lower the permissible post-race testing thresholds for Non-Steroidal Anti-Inflammatory Drugs (NSAIDs) to conform to the Model Rule promulgated by the Association of Racing Commissioners International (ARCI).
2. Amend the penalty guidelines for violations of the NSAID thresholds to adjust for the lowered thresholds discussed above. Currently, the penalties in Table 178-1 E for NSAID violations are pegged to the higher thresholds in the previous iteration of the ARCI Model Rule. In order to make the penalty guidelines consistent with the lower thresholds, it is proposed that the rule be amended to do away with the two-tier penalty guidelines for NSAID violations in Table 178-1 E and to establish one set of penalty guidelines for all NSAID violations. The proposed penalty guidelines would be consistent with the penalties that are currently in Table 178-1 E in the column for NSAID violations at higher overage amounts. The proposed amended penalties are: First offense: Minimum fine of \$1,000.00 absent mitigating circumstances; Second offense: Minimum fine of \$1,500.00 and 15-day suspension absent mitigating circumstances; Third offense: Minimum fine of \$2,500 and 30-day suspension absent mitigating circumstances. Disqualification of the horse would also be imposed for all levels of offenses.

These proposed changes are incorporated in 49.6.c.d.e.f and referenced in 178-1-F version 4.2.1 and the changes to the subsequent penalty table 178-1 E. These medications are considered therapeutic by the Association of Racing Commissions International (ARCI). The administration of these medications given under the current standards are not performance enhancing but therapeutic in nature. One of the most concerning issues is the level of detection for the second substance. Even a trace amount of a secondary NSAID constitutes a stacking violation with excessive penalties.

These medications do not impact the performance of the horse on race day. Medications that support the health of the horse by reducing inflammation but are not performance enhancing should not be eliminated to the point of ineffectiveness. We understand the intent which is to prevent interference with pre race exams in the early morning hours. In West Virginia, unlike most other jurisdictions in the Mid Atlantic region, we have night racing and our pre race exams are performed starting at 2 pm, not 7 am. Therefore, the potential interference from NSAID administration would be negated.

Thank you for your consideration of our comments.

Sincerely,

Jami Poole

Jami Poole
President



Mr. Joe Moore
Executive Director
West Virginia Racing Commission
900 Pennsylvania Avenue
Suite 533
Charleston, WV 25302

June 25, 2021

Via email only

Re: In support of rule amendment filing for adoption of ARCI Model Rules pertaining to:

- Post-race thresholds and penalties for NSAIDs
- Joint injections in racehorses
- The use of clenbuterol in racehorses

Dear Mr. Moore,

The Mid-Atlantic Strategic Plan to Reduce Equine Fatalities, a culmination of regional efforts that have been ongoing for almost a decade, was formally created in 2019 with the express purpose of improving the safety of Thoroughbred racing, protecting the welfare of the horses and riders, and promoting the integrity of the sport. With the consensus of a partnership that includes the regulatory agencies, racetrack management and horsemen's groups in the Mid-Atlantic region, including West Virginia's stakeholders, we have been and continue to develop uniform Best Practices for the Thoroughbred industry that are the foundation of our mission.

In recent years, West Virginia has made great strides in horse health and safety and racing integrity, with the addition of Equine Medical Director Dr. Francis Daniel; the adoption of a mortality review board for equine fatalities; the implementation of voided claim and anti-stacking regulations; and the ban on bisphosphonates and the continuing education requirement for trainers and assistant trainers approved last year.

Those measures have helped to reduce the equine fatality rate in West Virginia by more than 50% over the last two years – from a rate of 2.79 per 1,000 starts in 2018, to a rate of 1.38 per 1,000 starts in 2020. We applaud your efforts, and encourage the adoption of the proposed ARCI Model Rules as the next steps.

Currently, West Virginia is the only racing jurisdiction in the Mid Atlantic that has not adopted the ARCI Model Rules on NSAIDs and intra-articular joint injections. Adoption of these Model Rules will bring uniformity to the region, aligning the state with Delaware, Maryland, New Jersey, New York, Pennsylvania, and Virginia.

The Model Rule on NSAIDs increases the withdrawal time from 24 to 48 hours, a change vital to the protection of the horses. A recent study linked the presence of the NSAID phenylbutazone in a horse's system to the risk of a fatal injury. The administration of NSAIDs 24 hours before a race also can hinder the ability of a regulatory veterinarian to properly assess a horse's fitness during the mandatory pre-race examination, which takes place as much as eight hours before post time of a horse's race. This amendment will protect the integrity of the pre-race examination, and ensure that soundness is not affected during the examination or the race itself.

Where this rule has been implemented, horsemen have been advised to administer only one NSAID within one week of a race to avoid a "stacking" violation, wherein more than one NSAID is detected in a post-race testing sample, and that practice has been largely successful in eliminating "stacking" penalties.

The Model Rule on joint injections increases the withdrawal time for intra-articular joint injections from seven to 14 days. These treatments have a therapeutic value in the equine athlete, but sufficient time is needed for the trainer and the attending veterinarian to properly evaluate the horse's response to the therapy. The horse should not be exposed to the stress of competition until a full evaluation has been made. The extension of time between treatment and competition allows for that comprehensive appraisal.

The ARCI Model Rule on clenbuterol in racehorses was reviewed and unanimously supported by the Strategic Plan coalition members last October. While the medication is effective and beneficial to horses with respiratory illnesses, there have been instances of misuse, and clenbuterol should not be included in a treatment plan without a proper diagnosis. The new rule will help to eliminate improper use.

The new guidelines on clenbuterol have been adopted by reference in Delaware, New Jersey and Pennsylvania, and have gone through the regulatory process and been implemented in Maryland and New York. Virginia will have the rule in place for its 2021 Meet.

All of the proposed Model Rules have been put into effect throughout the Mid Atlantic without significant issues in terms of compliance or the ability of racing offices to attract entries. Horsemen have adjusted their treatment protocols to conform with the new rules.

The 2017 Economic Impact Study of the U.S. Horse Industry, conducted by the American Horse Council (AHC) Federation in conjunction with The Innovation Group, found that the horse racing industry generates more than 240,000 jobs nationwide and has a \$15.6 billion impact on the U.S. economy. It is an industry vital to the Mid-Atlantic region, but it will only be viable if the stakeholders show real commitment to equine safety and welfare. The proposed adoption of the ARCI Model Rules by the West Virginia Racing Commission demonstrate the state's resolve to continue to do all it can to protect Thoroughbred racing and the equine and human athletes who are at its core. The potential for positive impact on safety and integrity is momentous.

Thank you for the opportunity to voice support for these progressive and beneficial rule changes.

Sincerely,



Andy Belfiore
Project Manager
Mid-Atlantic Strategic Plan to Reduce Equine Fatalities
(732) 673-2855

HOLLYWOOD *Casino* AT CHARLES TOWN RACES

VIA EMAIL

June 14, 2021

Mr. Joe Moore
Executive Director
West Virginia Racing Commission
900 Pennsylvania Avenue, Suite 533
Charleston, WV 25302

Dear Joe,

Hollywood Casino at Charles Town Races ("HCCTR") thanks the West Virginia Racing Commission ("WVRC") for the opportunity to comment publicly on some of the proposed changes to state's Thoroughbred Racing Rules. While HCCTR submitted some rule requests that did not make it into the proposed changes put out for public comment, we will keep our comments contained to those discussed at the WVRC's May 2021 meeting out of deference and respect for the process.

One overarching comment HCCTR has is that these past 15 months have taught us that the ability to remain flexible in operations during challenging times is of the utmost importance. Mandating that an organization does something is only as good as the resources at its disposal to do it as well as the reasonableness of the administrative ask in light of those resources. Many people seem to assume that HCCTR has an unlimited workforce and unlimited resources. We can assure you it does not. Some of these proposed rules are designed to augment HCCTR's head count and operating costs during a time where the hiring climate is, at best, uncertain.

Proposed Rule 10.3.c

Proposed Rule: The horsemen's bookkeeper shall disburse the purse of each race and all stakes, entrance money, jockey fees, trainer's 10% gross commission and purchase money in claiming races, along with all applicable taxes, upon request, within forty-eight (48) hours of receipt of notification that all tests with respect to such races have cleared the primary testing laboratory as reported by the stewards or the Racing Commission, except that minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory(ies). Provided, however, that owners may receive their purse award within forty-eight (48) hours of the official end of the race by entering into a purse release agreement. A purse release agreement shall specify that in the event there is a primary testing result indicating a medication violation negating the winning status of an owner's horse, that such owner shall fully reimburse the purse account within twenty-four (24) hours of receipt of notice of the order of disqualification by the stewards. For purposes of this rule, such twenty-four (24) hour notice of receipt of the order of disqualification shall run as of the time and date of posting or as of the time and date of electronic transmission of such notice. In the event that the owner fails to reimburse the purse account, the stewards may suspend the owner's occupational permit and enter such action and the reason therefor into the database of the Association of Racing Commissioners International (RCI). Any suspension for failure to reimburse the purse account shall remain in effect until reimbursement has been satisfactorily made, together with such other fees and fines determined by the stewards in connection with the race for which the disqualification was determined.

Proposed Rule 10.3.d

Proposed Rule: The trainer's 10% gross commission shall be administered as follows: The horsemen's bookkeeper shall deduct the standard 10% gross commission for trainers from all starters that finish first, second or third in all overnight and stakes races after purses are released. Trainers may apply with the horsemen's bookkeeper in advance in order to receive his or her 10% gross commission by completing and submitting a standardized application form provided by the Racing Commission, together with an IRS Form W-9. The horsemen's bookkeeper shall validate submitted applications and report deficiencies in such to the trainer for correction or supplemental information within thirty (30) days.

HCCTR Comment: HCCTR takes the proposed changes to Rule 10.3.c. and 10.3.d. in concert, finds them problematic and objects to their inclusion in their current form for several reasons.

The proposed rules are completely insufficient in remedying any breach or holding the purse fund – which is overseen by HCCTR in this case – harmless. Should someone be forced to pay the money back to the purse fund that results from a failed test (or some other reason) and refuses, they will have a violation on their license, but this in no way guarantees the purse fund is made whole. If that trainer refuses to make financial restitution, HCCTR is in no way indemnified from having to make the purse fund whole as a result of the actions of a Charles Town HBPA ("CTHBPA") member. HCCTR finds that untenable. However, HCCTR would be willing to consider this rule if language it finds acceptable is included that mandates the CTHBPA (or analogous horsemen's organization at Mountaineer) indemnifies the track and purse fund and makes it whole should the purse fund shortage not be repaid by the offending individual in a thirty (30) day period.

With respect to the inclusion of trainers in the proposed rule, the payment of a trainer has always been a private, contractual relationship between an owner and that trainer. Not every trainer is paid 10% of every purse. In fact, there are varying percentages and varying agreements between owners and their trainers. Rules 10.3.c. and 10.3.d. seek to spell out a contractual relationship between owners and trainers by shifting an administrative burden onto HCCTR's staff to make sure owners pay their trainers. Should an owner not pay a trainer, there are other contractual remedies available as well as the ability to obtain a judgement. Furthermore, the same issue as above still exists wherein if a trainer should be forced to pay back money and is unable or refuses to do so, there is no mechanism to make the purse fund whole. For those reasons, HCCTR opposes any inclusion of trainers in these proposed rules.

Proposed Rule 22.9.c

Proposed Rule: Unless otherwise authorized by the Racing Commission, the association shall provide continuous security in the stable and/or barn area during all times that horses are stabled on the grounds.

HCCTR Comment: This rule, as proposed by the CTHBPA, is difficult to express an exact response to, due to the fact that it's vague and impossible for us to discern the intent therein.

If this rule is intended for HCCTR to provide a security presence 24/7 in the main stable gate, it has represented to the WVRC on several occasions, the only times

HCCTR has not had the guard gate for the barn area manned 24 hours a day, 7 days a week has been when it's been operationally impractical, if not impossible, to do so. That has been confined to when the pandemic hit in 2020 to present day. Even so, there is presently still a procedure in place to admit people to the barn area at times when the main gate is not manned. We are not aware of a single person that has not been able to gain access to the barn area.

As we have also represented to the WVRC, even if such a rule was in place over the past 15 months, HCCTR would not have been able to comply with it due to extreme difficulties in hiring employees to fill out our staff. This speaks to the need for caution in creating rules that would inevitably lead to the tracks not being in compliance in certain circumstances.

If this rule is meant to imply a larger scale security presence, HCCTR can neither commit to anything in the current employment environment that would reasonably satisfy this, nor could it foresee any other situations in the future that would make it difficult to comply with.

Proposed Rule 22.9.d

Proposed Rule: The association shall require any person entering the stable and/or barn area to display a badge, a visitor's pass or other valid credentials and a written record of all individuals admitted to the stable and/or barn area between the hours of 12:00 a.m. and 5:00 a.m. shall be maintained and available for inspection. At a minimum, this record shall contain the name of the person admitted, the person's occupational permit number or alternate identification information and the time admitted.

HCCTR Comment: Other than as an end-run for permanent, 24-hour access to the barn area, HCCTR remains unsure why those entering the barn area between the hours of 12:00 A.M. and 5:00 A.M. would be any more or less important than those doing so during other hours of the day.

The proposal of mandating a written log of everyone entering the HCCTR barn area at any time that contains all of that information is administratively burdensome regardless, but especially in light of points in time where HCCTR is struggling to fill the roles responsible for these duties. It also becomes a completely inefficient way to admit permit holders to the barn area should there be a queue of cars and our staff is forced to complete a written log that forces people to wait an inordinate amount of time. Furthermore, during non-pandemic times, HCCTR has utilized a badge swipe at the gate when, coupled with surveillance, can be – and has been – used in an attempt to determine the entry and/or presence of someone in the barn area.

Also important to note with respect to this proposed rule – Rule 23.1 regarding Security at the track has been in existence for a long time and gives the association latitude with respect to how to secure and police its grounds. The rules that currently exist are more than adequate in outlining what the association should be doing without proscribing the exact methods of doing it. HCCTR finds the current rules wholly sufficient.

Proposed Rule 22.9.e

Proposed Rule: The association shall provide security fencing around the stable and/or barn area in a manner that is approved by the Racing Commission. Provided that, all

existing fencing surrounding the stable and/or barn area shall be deemed approved by the Commission.

HCCTR Comment: HCCTR is struggling to understand the policy rationale for the inclusion of this proposed rule, the intent and what "around the stable and/or barn area" is intended to entail. There could easily be fencing that is cosmetic, designed for a purpose ancillary to securing the barn area or necessary to address an operational issue that's previously been routine and would now potentially be subject to this proposed rule. If the concern is securing the barn area, existing Rule 23.1.c. already requires the association to prevent access to its barn area to non-licensed individuals (which it does by securing the area via fencing) and anything additional is unnecessary.

Proposed Rule 22.9.f

Proposed Rule: The association shall maintain a receiving barn for the purpose of receiving horses not stabled on association grounds. All horses entered to compete that are not stabled on association grounds and that arrive on association grounds within twenty-four (24) hours of the post time of the race for which they are entered are required to go directly to the receiving barn and shall be subject to heightened surveillance to prevent unauthorized access to horses that would provide an opportunity for improper or illegal medication administration. At a minimum, heightened surveillance shall include human or electronic oversight of all stalls within the receiving barn at all times that it is occupied by one or more horses.

HCCTR Comment: HCCTR opposes the inclusion of this rule and has successfully operated without a receiving barn for more than one year at this point. If anything, the events of the previous 15 months have taught us the need for flexibility as an operator is incredibly important. From an inability to staff one to a simple cost-benefit analysis, there are numerous reasons a racetrack may have reason to find operating alternatives to something such as having a receiving barn. It's also impossible to predict when these situations may arise and this attempts to lock us in to one method of operating.

With that being said, it is HCCTR's full intention to return to an operating receiving barn very soon — if not by the time this public comment has been submitted. However, consistent with our comments above on the need for flexibility in operations, HCCTR would not want to be hemmed into to operating in the fashion this rule provides. It would be impractical for us to dedicate an entire barn as a receiving barn due to the reduced volume of ship-in horses we now see. Additionally, we would not want to foreclose the possibility of trainers shipping into the barns of others they are comfortable with versus a receiving barn and we would likely want to assign horses running in some stakes into non receiving barn stalls as has been our practice. With the existence of surveillance in the barns at HCCTR in the same manner as contemplated by the proposed rules, there is no heightened risk of the administration of an illegal medication in general, nor would we understand why horses shipping in require such a heightened scrutiny versus the horses already on the grounds.

Omission from the Proposed Rules

HCCTR Comment: The WVRC has declined to adopt the corresponding penalties for medication violations that exist in the rest of the region HCCTR operates in. To that end, West Virginia is an outlier.

Ultimately, a rule is only as effective as the corresponding punishment attached to it. If the crime of bank robbery carried a maximum penalty of one day in prison, you would likely be incentivizing people to rob banks.

With respect to medication violations and their punishments, the racing industry has arrived at a fork in the road. Will it ease back or stick with the status quo on penalties that are associated with violations that continue to erode the public's trust in horse racing or will it take the opposite tact, say enough is enough, and treat people who violate rules by taking them to task. In our opinion, the only way horse racing gains the trust of the public is by engaging in the latter. However, by not enacting more strict penalties in line with other jurisdictions, the WVRG is consciously choosing to take the opposite approach.

The rationale given at the previous WVRG meeting for not being consistent with everyone else was that, the "thousand dollar [penalty] to a trainer in New York, Maryland, New Jersey, Delaware is a whole lot worse than a thousand dollars to a trainer in West Virginia."

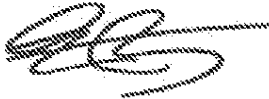
This statement completely ignores the reality that tracks such as Finger Lakes in New York, and Penn National and Presque Isle Downs in Pennsylvania – all of which come under the penalty guidelines the WVRG have opposed – have daily purse distributions approximately equal to or less than daily purse distributions are at Charles Town yet still exist and operate under the heightened penalty guidelines.

Furthermore, such a rationale is a clear indicator that keeping such trainers in the game by not levying more substantial punishments trumps the integrity of the sport in the eyes of some. Quite simply, consciously formulating the rules in a way designed to keep rule violators in the game and operating is incredibly curious in light of the WVRG's mission to uphold the integrity of the sport.

As such, we strongly urge the WVRG to revisit the penalty structure it declined to include in the rules put out for public comment and bring the state in line with other jurisdictions.

Once again, HCCTR appreciates the ability to comment publicly on these proposed rules and is happy to answer any questions you may have at your convenience.

Regards,



Erich Zimny
VP of Racing & Sports Operations

CC: Chris McElean
Scott Saunders
Charles McIntosh